

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation)	
Provisions of the Telecommunications Act)	
of 1996)	
)	
Petitions for Declaratory Ruling, Reconsideration)	NSD File No. L-99-34
and/or Clarification of the Payphone)	
Compensation Second Order on Reconsideration)	

**REPLY COMMENTS OF
INTELLICALL OPERATOR SERVICES, INC.**

I. Introduction.

Intellicall Operator Services, Inc., d/b/a ILD (“ILD”), hereby respectfully files its Reply Comments in response to those comments or oppositions filed by interested parties¹ pursuant to the Federal Communications Commission’s (“Commission’s”) Public Notice² requesting comments on various requests for declaratory ruling, reconsideration and/or clarification of the

¹ Comments or oppositions were filed by Ad Hoc Resellers Coalition (“Ad Hoc”); American Public Communications Council (“APCC”); Association of Communications Enterprises (“ASCENT”); AT&T Corp. (“AT&T”); Bulletins; CenturyTel Long Distance (“CenturyTel”); CommuniGroup of K.C., Inc. *et al.* (“the Switch-Based Resellers”); Flying J Inc. and TON Services, Inc. (“Flying J”); Global Crossing Telecommunications, Inc. (“Global Crossing”); IDT Corporation (“IDT”); International PrePaid Communications Association (“IPCA”); Network Enhanced Telecom, LLP (“Network IP”); One Call Communications, Inc. (“One Call”); Qwest Communications International Inc. (“Qwest”); the RBOC Payphone Coalition (“RBOC Payphone Coalition”); Telstar International, Inc. (“Telstar”); VarTec Telecom, Inc. (“VarTec”); and WorldCom, Inc. (“WorldCom”).

² Public Notice DA 01-1967, released Aug. 20, 2001.

Second Order on Reconsideration in the above-captioned proceeding.³

As discussed below, many of the commentors in this proceeding agree with ILD that the proposals of AT&T, WorldCom, and Global Crossing to change the definition of a “completed call” should be summarily denied. Changing the definition to include incompleting calls is unlawful and without precedent. It would create a windfall in payphone compensation for interexchange carriers and payphone service providers while punishing switch-based resellers that have followed the existing rules and paid what they owed in payphone compensation. More importantly, a change in the definition of “completed calls” could easily place reasonably priced prepaid calling card services out for reach for millions of low-income consumers.

In light of the continuing controversy in the industry regarding the “first switch” method of payphone compensation, as evidenced by the comments filed in this proceeding, ILD strongly suggests that the Commission abandon its “first switch” rules and maintain the “last switch” method of payphone compensation that is currently in effect. If the Commission strictly enforces these rules by levying appropriate fines and forfeitures on recalcitrant carriers, the Commission should be able to achieve its goal of ensuring that payphone service providers receive fair compensation for all completed, coinless calls. In the alternative, the Commission should consider adopting a “caller pays” method of payphone compensation.

³ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, NSD File No. L-99-34, Second Order on Reconsideration, FCC 91-109 (rel. Apr. 5, 2001) (“*Second Order on Reconsideration*”). Petitions for clarification, declaratory ruling, or reconsideration were filed by Bulletins, WorldCom, AT&T, and Global Crossing.

II. As Many Commentors Agree, The Commission Should Deny The Petitions Of AT&T, WorldCom, And Global Crossing, Since Changing The Definition Of a “Completed Call” As Proposed By These Parties Would Have a Devastating Impact On Low-Income Consumers And On Prepaid Calling Card Providers, While Granting An Unearned Windfall To Interexchange Carriers and Payphone Service Providers.

As ILD argued in its Comments, there is absolutely no legal or compelling basis for changing the definition of a “completed call” as proposed by AT&T, WorldCom, and Global Crossing in their petitions. Most of the parties filing comments in this proceeding agree with ILD’s position and echo in their own filings the arguments made by ILD. The proposal by AT&T and WorldCom to redefine a “completed call” as one that is completed on the underlying facilities-based carrier’s network is plainly and simply illegal. It violates Section 276 of the Communications Act of 1934 (“the Act”) by forcing resellers to compensate payphone service providers for incomplete calls.⁴ Furthermore, it is contrary to long-standing Commission policy, which defines a completed call as one that has been answered by the called party.⁵

The proposal by Global Crossing to use a timing surrogate to determine call completion is also illegal and contrary to Commission policy. As many commentors note, the Commission has previously rejected the use of timing surrogates, and for good reason.⁶ Call completion times vary widely from payphone to payphone and from carrier to carrier, making it difficult if not impossible to fashion timing surrogates that reliably account for differences among networks and carriers.⁷ The adoption of any timing surrogate, under these circumstances, will only lead to

⁴ See Comments of the Switched-Based Resellers at 2, 4; Qwest at 6; VarTec at 4; Telstar at 1,4; IDT at 7-8; ASCENT at 4, 10; Ad Hoc at 2; IPCA at 2, 6-7.

⁵ See Comments of the Switched-Based Resellers at 3-4; RBOC Payphone Coalition at 2, 6; Telstar at 5; ASCENT at 4, 8-9; IPCA at 2, 6-7.

⁶ See Comments of One Call at 5; RBOC Payphone Coalition at 8; Flying J at 9; IDT at 8; AT&T at 1; Bulletins at 7.

⁷ Comments of IPCA at 12.

overcompensation of payphone service providers in some circumstances and undercompensation of payphone service providers in others, both in clear violation of Section 276 of the Act.⁸

Changing the definition of a “completed call” as proposed by AT&T, WorldCom, and Global Crossing would have a devastating impact on switched-based resellers and prepaid calling card providers, as many commentators observe. Completion rates for payphone calls are no more than 70 percent for domestic calls and are substantially less for international calls (anywhere from 10 to 60 percent depending on the destination).⁹ As such, forcing switch-based resellers to pay payphone compensation on incompleting calls as well as on completed calls results in a substantial, unearned windfall for interexchange carriers and payphone service providers. It encourages payphone service providers to engage in fraud, by generating phantom calls to switched-based reseller platforms.¹⁰ But more importantly, it imposes tremendous additional costs on switch-based resellers. For carriers that have faithfully attempted to satisfy their obligations regarding payphone compensation and reporting, forcing them to pay for incompleting calls is nothing less than a penalty imposed for being a good corporate citizen and following the Commission’s rules. It is discriminatory,¹¹ and places ILD and other such resellers at a significant competitive disadvantage in the market,¹² since none of the interexchange carriers bear the costs of incompleting calls. Many switched-based resellers could be driven out of the

⁸ See Comments of Flying J at 8-9; IPCA at 11.

⁹ See Comments of CenturyTel at 4; Telstar at 11; One Call at 4; the Switch-Based Resellers at 6.

¹⁰ See Comments of Flying J at 5, n.4.

¹¹ See Comments of the Switched-Based Resellers at 6; RBOC Payphone Coalition at 2, 7; Telstar at 2, 11-12; IDT at 7-8; ASCENT at 12; Century Tel at 3; IPCA at 2, 6.

¹² See Comments of the Switched-Based Resellers at 2; Telstar at 10, 14-15; Global Crossing at 2-3; Flying J at 5-6; IDT at 6, 8; ASCENT at 12; CenturyTel at 2; Ad Hoc at 2, 5; IPCA at 8.

market if the definition of “completed call” is changed as proposed.¹³

The most important reason why the Commission cannot change the definition of a “completed call” as proposed by AT&T, WorldCom, and Global Crossing is because such action will have a disastrous impact on American consumers, particularly low-income consumers.¹⁴ If switch-based resellers and prepaid calling card providers must pay compensation on every call, regardless of completion, these carriers will be forced to raise their rates dramatically (particularly on international routes) to recover such additional and unwarranted costs. Both payphones and prepaid calling cards tend to be used disproportionately by immigrants, the poor, and others of modest means.¹⁵ Thus, as ASCENT observes, the group of consumers most directly affected by the change in the definition of a “completed call” would be the consumers least able to bear the associated increase in charges.¹⁶

In its comments, APCC supports the requests of AT&T and WorldCom regarding the definition of a “completed call,” and it describes these requests as “requests for clarification.”¹⁷ APCC’s support of the interexchange carriers on this issue is self-serving, since (as noted above) a change in the definition of a “completed call” as proposed would result in APCC’s payphone service provider members being grossly overcompensated. It is also clear that the petitioners are asking for much more than a “clarification” of the Commission’s rules. Rather, AT&T and

¹³ See the Switched-Based Resellers at 3, 6; One Call at 4; Telstar at 2, 16; Global Crossing at 4; Flying J at 4; CenturyTel at 2.

¹⁴ See Comments of ASCENT at 12; Telstar at 12-13; the Switch-Based Resellers at 6.

¹⁵ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd. 20541, 20585 (1996); *Amendment of the Commission’s Rules and Policies to Increase Subscribership and Usage of the Public Switched Network*, Notice of Proposed Rulemaking, 10 FCC Rcd. 13003 (1995).

¹⁶ Comments of ASCENT at 12.

¹⁷ Comments of APCC at 2.

WorldCom (as well as Global Crossing) are seeking major changes to the Commission's rules that will gouge switched-based resellers, prepaid calling card providers and –most importantly – the American consumer, all while creating enormous benefits for the petitioners themselves. Indeed, WorldCom is not even waiting for Commission review or approval of its proposed change in the definition of a “completed call” to begin its plunder. WorldCom has advised ILD that it will implement its proposed rule change as of December 1 by unilaterally requiring its switched-based reseller customers to remit all payphone compensation through WorldCom and for incompleting calls.¹⁸

None of the parties supporting these rule changes makes any attempt to demonstrate that the Commission erred in adopting the existing definition of a “completed call” or provides any other sustainable justification for the rule changes proposed. Since the Commission cannot change its definition of a “completed call” simply to line the pockets of the interexchange carriers and payphone service providers at the expense of resellers, prepaid calling card providers, and American consumers, the petitions of these parties must be denied.

III. In Light Of The Problems Posed By The “First Switch” System Of Payphone Compensation, The Commission Should Maintain Its “Last Switch” Method And Strictly Enforce Its Rules To Best Ensure That Payphone Service Providers Are Fairly Compensated For All Completed, Coinless Calls.

In the *Second Order on Reconsideration*, the Commission adopted a “first switch” method of payphone compensation because it was convinced that the existing “last switch” scheme was not “ensuring that [payphone service providers] receive compensation for each and every completed, coinless payphone call.”¹⁹ However, the comments received in this proceeding

¹⁸ See also Comments of IPCA at 6, 9; Network IP at 2; Telstar at 14. ILD agrees with IPCA that the Commission should act promptly to restrain WorldCom's unlawful conduct pending its decision on WorldCom's petition. Comments of IPCA at 7.

¹⁹ *Second Order on Reconsideration* at ¶ 10.

thus far strongly suggest that the Commission's new "first switch" method is not an easy solution to the problem of payphone compensation. Indeed, the "first switch" scheme may not solve the problem of payphone compensation at all if, as some commentators suggest, this scheme cannot realistically be implemented.

The commentators in this proceeding represent the entire spectrum of stakeholders in the proceeding's outcome -- interexchange carriers, payphone service providers, switched-based resellers, dial-around billing agents and professional organizations. The comments received make it quite clear that the Commission finds itself in the midst of an imbroglio with little if any "wiggle room" in its quest to devise a system that will better ensure fair compensation to payphone service providers. Interexchange carriers argue in this proceeding that under the "first switch" scheme, they have no way to independently ascertain which calls are completed and thus compensable. They do not want to be caught in the middle of any fight between the payphone service providers and the switch-based resellers over compensation for coinless calls, and so they propose to solve the problem by simply declaring all calls completed. For the interexchange carriers, this solution eliminates the need to track calls as well as the need to provide so-called voluminous and burdensome Commission-mandated reports that payphone service providers would otherwise need to verify that dial-around compensation was duly paid on all completed calls. However, as the switch-based resellers and others rightfully point out (as shown above), the interexchange carriers' solution is anticompetitive, discriminatory, violates long-standing Commission policy, violates Section 276 of the Act, and most importantly, has a devastating impact on low-income American consumers. If the switched-based resellers are correct (as ILD believes they are) and the Commission cannot grant the interexchange carriers' request for relief, what options are available to ensure that the payphone service providers are duly compensated?

ILD strongly recommends that the Commission abandon its new rules and maintain the “last switch” method of payphone compensation that is currently in effect. Indeed, adding a new layer of complication will only make the problem worse. Per APCC (as described by the Commission in the *Second Order on Reconsideration*), the fundamental problem with the “last switch” method is that a number of interexchange carriers and switched-based resellers refuse to follow the rules: they refuse to identify to the payphone service providers those carriers that are responsible for payphone compensation, and they refuse to track the calls.²⁰ Thus, the fundamental problem with the “last switch” method is one of enforcement, and can be best solved by making the relevant parties step up to their obligations regarding payphone compensation. In that regard, the Commission should remind interexchange carriers of their obligation to identify the relevant switched-based resellers and provide applicable access and subscriber 8XX numbers to payphone service providers. Payphone service providers also have an obligation to timely and accurately identify the payphone ANIs for which they seek compensation. The Commission should also expressly confirm the obligation of switched-based resellers to make timely payments and provide appropriate call completion information as required to payphone service providers. With these reminders in place, the Commission can and should strictly enforce its rules on payphone compensation by levying fines and forfeitures on interexchange carriers and switched-based resellers that fail to comply.

In the alternative, the Commission should consider the “caller pays” method of payphone compensation. A “caller pays” solution does not present the discrimination or policy issues posed by the “first switch” payphone compensation rule adopted in the *Second Order on Reconsideration*, as modified by the interexchange carriers’ new “completed call” definitions.

²⁰ *Second Order on Reconsideration* at ¶ 8, citing Comments of APCC filed May 17, 1999 and Reply Comments of APCC filed June 1, 1999 in CC Docket No. 96-128.

Furthermore, all stakeholders benefit when the “caller pays” method of payphone compensation is employed. Payphone service providers receive compensation for coinless calls from the cost causer (the calling party) as soon as the call is made and the obligation incurred. Interexchange carriers and switched-based resellers are not required to implement any complicated administrative or data processing regimes for payphone compensation. Conflicts between interexchange carriers, payphone service providers, and switched-based resellers regarding payphone compensation are eliminated if the calling party pays for the calls.

ILD realizes that the Commission has previously expressed misgivings about the legality and desirability of the “caller pays” method.²¹ However, the Commission should recognize that consumers will not be hurt if a “caller pays” regime of payphone compensation is employed. One way or another, callers ultimately pay for coinless calls under any “carrier pays” methodology. Callers will pay even more for coinless calls in any “carrier pays” regime that is modified for the convenience of the interexchange carriers, as would be the case if the Commission adopted the interexchange carriers’ revised definitions of a “completed call.” Furthermore, while the Commission has found that the statutory language and legislative history of Section 226 of the Telephone Operator Consumer Services Improvement Act (“TOCSIA”)²²

²¹ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunication Act of 1996*, Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545, 2565 (1999) (“*Third Report and Order*”).

²² Telephone Operator Consumer Services Improvement Act, Pub. L. No. 101-435, 104 Stat. 986 (1990) (codified at 47 U.S.C. § 226). Per the Commission, the relevant portions of the Senate Report provide that Section 226(e)(2) bars the Commission from concluding that compensation for compensable calls must be paid by the caller. See *Third Report and Order* at 2597 n. 219, citing S. Rep. No. 101-439 at 20 (1990). The Commission also references Section 226(e) of TOCSIA, which provides that “the Commission shall consider the need to prescribe compensation (other than advance payment by consumers) for owners of competitive public pay telephones for calls routed to providers of operator services that are other than the presubscribed provider of operator services for such telephones.” *Id.*

indicate Congress’ disapproval of a “caller pays” methodology, the Commission clearly does not view this as an absolute bar. In the *Third Report and Order*, the Commission indicated that it would reconsider a “caller pays” compensation approach depending on “the advancement of call blocking technology and any accompanying marketplace developments.”²³

If the Commission is not willing to abandon its “first switch” method of payphone compensation, then the Commission should delay the implementation of these rules (currently set for November 23, 2001). It is clear from the comments filed in this proceeding that few if any interexchange carriers have dedicated any resources whatsoever to developing the tracking systems necessary to implement the terms of the *Second Order on Reconsideration*. As such, it appears that it will not be possible for the interexchange carriers to move to a “first switch” methodology of payphone compensation in one month’s time.

IV. Conclusion.

In light of these facts, the Commission should deny the petitions of AT&T, WorldCom, and Global Crossing for changes in the definition of a “completed call,” and should retain the “last switch” system of payphone compensation that is currently in effect.

Respectfully submitted,

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October 22, 2001

²³ *Third Report and Order* at 2597-2598.

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